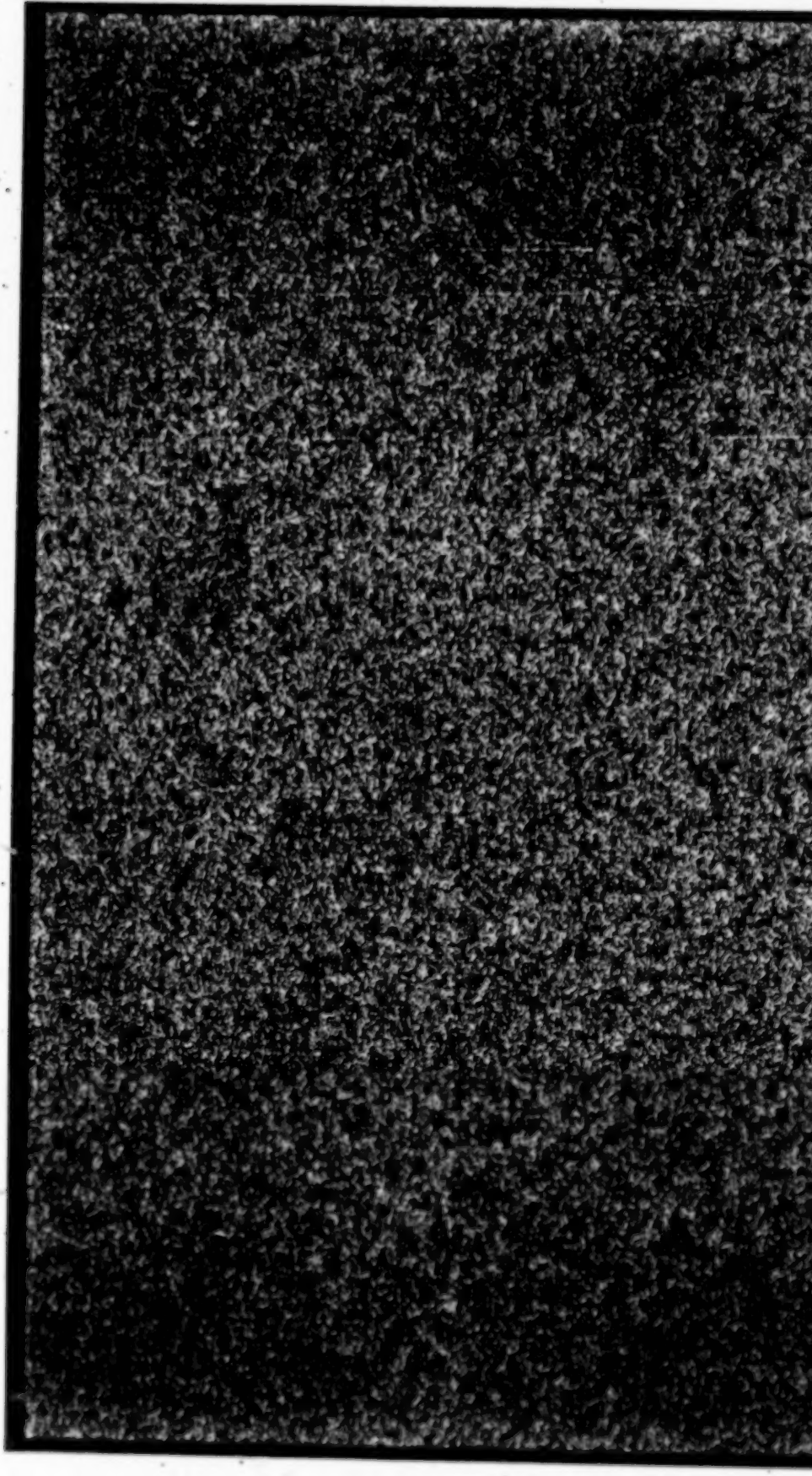

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 594

THE FEDERAL LAND BANK OF ST. LOUIS, A CORPORATION,

Petitioner,

vs.

A. B. PRIDDY, CIRCUIT JUDGE,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER.

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Development of the Farm Credit System.

For purposes of agricultural credit, the continental United States is divided into twelve districts. Each district is served by a group of four institutions, designed to meet the need for a national system capable of supplying all types of farm credit: a Federal land bank, a Federal intermediate credit bank, a production credit corporation and a bank for cooperatives, all under the supervision and regulation of the Farm Credit Administration. These four institutions are located in the same city, usually in the same building, and they are managed by a common board of directors.

Each of these institutions is a part of a coordinated system which has been developed over a period of years by congressional action. We shall review this development briefly.

Federal Land Banks.

The first permanent Government institutions for agricultural credit were the twelve Federal land banks, established under the Federal Farm Loan Act of July 17, 1916 (12 U. S. C., Chapter 7, subchapter I), for the purpose of making long-term loans to farmers upon the security of farm real estate. Closely related to these banks, and constituting an integral part of the system of farm mortgage credit, are the national farm loan associations, cooperative in character and organized under the Federal Farm Loan Act by local groups of farmers, for the purpose of obtaining credit from the Federal land banks.

On January 31, 1934, the flexibility of the credit facilities of Federal land banks was greatly increased by the provisions of the Federal Farm Mortgage Corporation Act (12 U. S. C., Chapter 7, subchapter II-A). This Act established a corporation with a capital of $200,000,000 furnished by the Government, and authorized the corporation to issue and have outstanding bonds not in excess of $2,000,000,000, such bonds to be fully guaranteed as to principal and interest by the United States. The corporation was authorized to acquire consolidated farm loan bonds (obligations of all twelve Federal land banks), either by purchase or by exchange for its own bonds. Thus, for the first time, the Federal land banks were enabled to obtain funds through this corporation, upon the credit of the United States.

The Second Annual Report of the Farm Credit Administration shows the extent to which the facilities of this

Corporation have been used in the Federal farm mortgage refinancing program. From May 1, 1933, through December 31, 1934, the Federal land banks made first mortgage loans in the approximate amount of $870,506,000. Of the funds required for the making of these loans, more than $575,000,000 were obtained by the Federal land banks, through the exchange of their consolidated bonds for bonds issued by the Federal Farm Mortgage Corporation, and fully guaranteed by the United States. During the same period the Land Bank Commissioner made loans (under § 1016) in the approximate amount of $623,948,000; and, of this amount, more than $400,000,000 was loaned by the Commissioner, acting on behalf of the Federal Farm Mortgage Corporation, and using bonds or the proceeds of bonds issued by the Corporation.

The Report also shows that since March 26, 1934, the Federal land banks have used bonds issued by the Federal Farm Mortgage Corporation, rather than cash, for the closing of most loans. This has been possible because approximately 90% of the loan proceeds has been used to refinance debts, and the creditors of farmers have accepted these bonds at par.

The extent of recent Government contributions to the Federal land banks, made for the purpose of enabling them to extend time for the payment of mortgage obligations, as provided in § 781, *Tenth-Thirteenth*, is clearly shown by this Report as follows: The Government subscribed $125,000,000 to the capital stock of the banks in 1932, of which $7,329,110 has since been retired; as of December 31, 1934, it had contributed $59,268,593 to the paid-in surplus of the banks, in order to permit the banks to extend time to their borrowers for the deferment and extension of amounts owing in reduction of the principal of their mortgage loans; and during the same period the Government paid to the

banks the sum of $12,356,925, to compensate them for the loss of income due to the statutory reduction in the interest rate of their mortgages.

Federal Intermediate Credit Banks.

After the farm mortgage system had been in operation for seven years, Congress passed the Agricultural Credits Act of March 4, 1923 (12 U. S. C., Chapter 7, subchapter III). This Act provided for the establishment of twelve Federal intermediate credit banks to furnish short-term and intermediate credit, by discounting the obligations of farmers which had originally been accepted by banks, by agricultural credit associations organized under State laws, and by other lending institutions, in connection with loans for agricultural purposes; also by lending money to cooperative credit institutions on the security of agricultural short-term paper. The Act required that these banks be located in the same cities as the Federal land banks, be managed by the same board of directors, and be operated under the supervision and regulation of the same Government office. By this Act, Congress placed in the Government a greater measure of control over the selection of directors of Federal land banks, who were made *ex officio* directors of the new intermediate credit banks. The original capital of these banks, totaling $60,000,000, was furnished by the United States, and all capital stock is Government-owned. The banks obtain their loan funds, for the most part, from the sale of debentures, which may be issued in amounts not exceeding ten times the capital and paid-in surplus of the issuing bank.

After another ten years Congress provided, by the Farm Credit Act of June 16, 1933 (12 U. S. C., Chapter 7, subchapter IV), for additional Government subscriptions of $40,000,000 to the capital and paid-in surplus of the Federal

intermediate credit banks; and also provided for a system of cooperative production credit associations, through which the facilities of the Federal intermediate credit banks would be more readily available.

In connection with this system of associations, Congress established twelve production credit corporations, whose principal functions are to organize, to assist in capitalizing, and to supervise the operation of the production credit associations. Congress placed these corporations in the same cities as the Federal land and intermediate credit banks, and under the management of the same directors (still greater control in the selection of directors being placed in the Government), and provided for Government subscription to the entire capital of these twelve corporations. According to the Second Annual Report of the Farm Credit Administration, the Government had furnished the production credit corporations with capital aggregating $112,000,000, as of December 31, 1934.

Banks for Cooperatives.

By the Farm Credit Act of 1933 (12 U. S. C., Chapter 7, subchapters V, VI), Congress provided for the establishment of banks for cooperatives, for the purpose of extending credit to farmers' cooperative marketing and purchasing associations, organized under State laws, and engaged in the processing or merchandising of agricultural commodities, and the purchasing of farm supplies. These banks afford permanent facilities for meeting the credit needs which were temporarily met by the Federal Farm Board,

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* The original provisions of law relative to the selection of the directors of Federal land banks are set forth in the Appendix to this Brief. The amended provisions are in 12 U. S. C., §§ 678-681.

through loans to cooperatives under the Agricultural Marketing Act of June 15, 1929 (Chapter 7, subchapter VII). The banks are required to be located in the same cities as the Federal land banks, to be managed by the same boards of directors, and to operate under the supervision and regulation of the same Government office.

The Farm Credit Act, in establishing these banks, provided that the initial capital should be furnished from Government funds (§ 1134b). Subscriptions to the capital stock of each district bank for cooperatives, paid in by the Government at the time of its organization, amounted to $5,000,000, and an additional $1,000,000 was subsequently subscribed to the capital stock of one of these banks, making a total Government subscription of $61,000,000. The Act requires that a cooperative association, in borrowing money from one of these banks, subscribe to its capital stock or guaranty fund in the ratio of $100 for each $2,000 or fraction thereof borrowed (§§ 1134d, 1134k). Government stockholdings in any of these banks may be increased or diminished, in the discretion of the Governor of the Farm Credit Administration, for the purpose of meeting the credit needs of the bank's district (§ 1134b).

The district banks for cooperatives, under the Farm Credit Act of 1933, may obtain loan funds from two sources: from their capital and earnings, and by rediscounting loan paper with the central bank for cooperatives. The central bank, also established by the Farm Credit Act of 1933, is managed by a board of directors consisting of the Cooperative Bank Commissioner (a Government official) and six other persons appointed by the Governor of the Farm Credit Administration (§ 1134g). This central bank, to whose capital stock the Government has subscribed $75,000,000 (Second Annual Report, Farm Credit Administration) is authorized to make loans under the same condi-

tions and for the same purposes as district banks for cooperatives, to rediscount loan paper for the district banks, and to issue debentures against collateral security, in amounts not in excess of five times the paid-in capital and surplus of the bank (§§ 1134j, 1134m).

The System as a Whole.

We thus find that Congress, by successive acts, established: *first*, the Federal land banks and national farm loan associations for the purpose of extending long-term credit on farm mortgage security; *second*, the Federal intermediate credit banks, production credit corporations and production credit associations for the purpose of extending short and intermediate term credit, for purposes of agricultural production, such as the planting of crops and the breeding, raising and fattening of livestock; *third*, the banks for cooperatives, to extend credit to cooperative purchasing or marketing associations, to assist such associations in the effective merchandising of agricultural commodities and food products thereof, to assist such associations in the financing of their operations, or in the construction or acquisition (or refinancing the cost of construction or acquisition) of physical marketing facilities for preparing, handling, storing, processing or merchandising agricultural commodities and food products thereof; and *fourth*, the Federal Farm Mortgage Corporation, for the purpose of permitting the Federal land banks to use the faith and credit of the United States in financing their operations and to provide the Land Bank Commissioner with funds for the making of first and second mortgage loans.

In entering upon each additional field of agricultural credit, Congress has made use of machinery already established, by placing new institutions under the same management as old, and by vesting the supervisory and reg-

ulatory power in the same governmental office. With each expansion of the original credit facilities, Congress has placed in the supervisory authority greater control over the actual operation of the institutions, by increasing the proportion of Government-appointed directors on the boards which manage them.

It is apparent, therefore, that both in law and in practical operation, the banking institutions are but parts of a single system, established by congressional action for governmental purposes, and operating toward a common end.*

Provisions of Law Common to Farm Credit Institutions.

There are certain provisions common to the statutes creating the banking institutions comprising the Farm Credit System. For the convenience of the Court, these provisions will be set forth in outline form.

Federal land banks, "when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs * * *; and

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* It may be helpful in visualizing this system to note the volume of its current operations.

The Second Annual Report of the Farm Credit Administration shows that as of December 31, 1934, the outstanding loans and discounts of the banks operating under its supervision, exclusive of the Central Bank for Cooperatives and the joint stock land banks, were as follows (figures stated in even thousands of dollars):

$1,896,415,000—Federal land bank loans
189,317,000—Federal intermediate credit bank discounts and loans (composed as follows:
$61,024,000—to production credit associations
55,672,000—to private financing institutions

they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them". (§ 701.)

Federal land banks have power "to sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons". (§ 676.)

National farm loan associations "shall organize subject to the requirements and the conditions specified • • • in sections 671-683 of this chapter [§ 4, Federal Farm Loan Act], so far as the same may be applicable". (§ 716). *National farm loan associations,* "including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and

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33,969,000—to cooperative associations
461,000—to bank and trust companies
55,212,000—to livestock loan companies, agricultural credit corporations, etc.
38,651,000—to regional agricultural credit corporations)
12,961,000—District banks for cooperatives, loans

$2,098,693,000—Total outstanding loans and discounts, December 31, 1934.

This Report further shows the following volume of loans and discounts made by these banks during the year 1934 (figures stated in even thousands of dollars):

$ 731,367,000—Federal land bank loans
405,886,000—Federal intermediate credit bank discounts and loans
18,717,000—District banks for cooperatives, loans

$1,154,970,000—Total loans and advances, 1934.

local taxation, except taxes upon real estate held, purchased, or taken by said * * * associations * * *" (§ 931). These associations "are authorized, upon request of the Land Bank Commissioner, to make available to him their services and facilities to aid in administering the provisions" of the Emergency Farm Mortgage Act, relative to loans by the Commissioner on farm mortgage security (§ 1018).

Federal intermediate credit banks, "when designated for that purpose by the Secretary of the Treasury, shall act as fiscal agents of the United States Government and perform such duties as shall be prescribed by the Secretary of the Treasury" (§ 1024).

Federal intermediate credit banks "have power to sue and be sued both in law and equity" (§ 1023). This section, unlike the corresponding provision with respect to Federal land banks, provides that "for purposes of jurisdiction [a Federal intermediate credit bank] shall be deemed a citizen of the State where it is located".

Banks for cooperatives (also *production credit corporations and production credit associations*), "when designated for that purpose by the Secretary of the Treasury, shall act as fiscal agents of the United States Government and when acting as such shall perform such duties as shall be prescribed by the Secretary of the Treasury" (§ 1138b).

Banks for cooperatives "have power to sue and be sued in any court" (§ 1138).

It is therefore apparent that all of these institutions, as well as all production credit corporations and production credit associations, are specifically authorized to serve as financial agents of the United States, and are specifically authorized to "sue and be sued". There is no material

distinction between the powers and liabilities of a Federal land bank in this respect and the corresponding powers and liabilities of the institutions for intermediate and short-term credit. While national farm loan associations, which constitute a part of the Federal land bank system, are not expressly authorized to sue and be sued, it appears that such power and liability is granted to them by the above quoted reference to certain powers and liabilities vested in Federal land banks; and it also appears that the associations may be and are employed, upon request of the Land Bank Commissioner, as financial agencies of the Government, to disburse the proceeds of loans made by the Commissioner.

In the recent case of *Hartford Production Credit Association* v. *Clark*, 118 Conn. 341, 172 Atl. 266, the following statement was made relative to the character of these short-term credit institutions as Federal agencies:

> "The facilities for short-term credits to agricultural producers afforded by the original action of the Federal government and through subsequent passage of the Farm Credit Act of 1933 were in response to imperative needs for relief of this nature so extensive and acute as to be of general cognizance * * *. The résumé of the elaborate provisions of the Farm Credit Act of 1933 which reasonable limitations of space permit us to give and the admitted facts are sufficient to demonstrate that the plaintiff [production credit] association is, in essence and in all practical aspects, a federal agency within the contemplation of our [chattel mortgage] statute. It is, and could be, created only under the federal act, and is expressly declared therein to be an instrumentality of the United States; its operations are supervised and regulated in all material respects by other federal agencies and by federal officials, and the funds with which it may make loans are derived from federal sources and obtained through other instrumentalities of the United States."

For the same reasons it has been held that a land bank, chartered under the provisions of the Federal Farm Loan Act, is neither a foreign corporation nor a domestic corporation, within the ordinary meaning of those terms, as set forth in State statutes. *Fisher & Van Gilder* v. *First Trust Joint Stock Land Bank,* 210 Iowa 531; 231 N. W. 671; 69 A. L. R. 1340, Ann. 1346.

It is well settled also, that the rights of creditors of public corporations and quasi-public corporations must yield to the paramount interests of the whole public. These corporations are granted franchises and are charged with duties which the public has an interest in having properly performed. The property of such corporations is exempt from seizure by attachment, garnishment, or execution. The remedy of creditors is not by summary seizure of property, but by the appointment of a receiver. (*Gue* v. *Tide-Water Canal Co.,* 24 How. (U. S.) 257. See also 10 Fletcher Cyc. Corp., § 4776; *Gardner* v. *Mobile & N. W. R. Co.,* 102 Ala. 635, 48 Am. St. Rep. 84; *Northern Alabama Railway Co.* v. *Lowery,* 3 La. App. 511, 57 So. 262.)

Therefore, each unit of the permanent Federal system of long and short-term agricultural credit is, equally with the Federal Land Bank of St. Louis, immediately concerned with the interpretation which this Court will place upon the Federal Farm Loan Act, in determining whether liability "to be sued" is synonymous with liability to seizure of property through garnishments or attachments.

Practical Considerations.

It will be recalled that the propositions so strongly urged upon this Court, in the petitioner's brief on the merits, are: That where the application of a State law to a Federal instrumentality would impede such instrumentality in the conduct of its operations, such statute may not be deemed

to extend to the Federal instrumentality, and that the application of garnishment or attachment laws to a Federal land bank would inevitably operate to hinder and impede such bank in its operations.

Similarly, the Federal intermediate credit banks and banks for cooperatives would be hindered in the conduct of their business if their property were subject to attachment or garnishment. May we cite just one example.

Both Federal intermediate credit banks and banks for cooperatives are authorized to make what are commonly termed "commodity loans" to cooperative associations. In each district, these cooperative associations engage in processing and marketing perishable commodities. In the Seventh Federal Land Bank District it is not uncommon for the intermediate credit bank or the bank for cooperatives to make a loan for as much as $750,000 to a cooperative association composed of cherry growers, in order that the association may meet the cost of picking and canning the fruit of its members' orchards. Funds must be available to the association when the picking season commences, in order to meet payrolls and to cover the cost of crates, trucking, etc. However, since the association cannot afford to pay interest for any unnecessary period, advances are made from the loan proceeds as and when needed.

The picking and canning of a cherry crop consumes only about ten days. Within that period, the crop must be gathered, taken to the canning plant and processed. Its perishable nature permits no delay. An entire crop of cherries, produced by hundreds of farmers in a single locality, might be ruined if, on the eve of the canning season, the funds of the bank should be impounded or made unavailable through the levy of an attachment or garnishment. Even a brief delay might result in heavy loss to the cooperative association and its members.

Similar examples are afforded by the operations of any intermediate credit bank or bank for cooperatives, and the variations upon the type of example are innumerable.

The effect of a garnishment or attachment might readily extend not only to individual farmers and their local organizations, but also to the credit of the Government's instrumentality. Both Federal land banks and Federal intermediate credit banks must be in position to meet interest payments on their bonds and debentures as the same come due. Upon the failure of one bank to meet its obligations, all banks of the same character become obligated under the law to step into the breach. (12 U. S. C., §§ 872, 1081.)

It is obviously unimportant to the petitioner in this case that a small tract of land in the hills of Arkansas should have been attached in a suit for small amount of money. However, it is of the utmost importance to the petitioner, to all other Federal land banks, and to the banks furnishing short and intermediate-term credit, that their assets be not impounded summarily, but be left for administration in accordance with the requirements and conditions of the laws under which these banks operate.

Respectfully submitted,

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APPENDIX.

Original provisions of the Federal Farm Loan Act, relative to selection of directors of Federal land banks:

[NOTE.—The original provisions of the Federal Farm Loan Act relative to the selection of directors, which are not contained in the United States Code, are set forth below. These provisions, as amended by Acts of 1923 and 1933, respectively, are contained in Title 12 of the United States Code, §§ 678-681.]

Federal Farm Loan Act, § 4, Seventh (39 Stat. 363).

The board of directors of every Federal land bank shall be selected as hereinafter specified and shall consist of nine members, each holding office for three years. Six of said directors shall be known as local directors, and shall be chosen by and be representative of national farm loan associations; and the remaining three directors shall be known as district directors, and shall be appointed by the Federal Farm Loan Board and represent the public interest.

At least two months before each election the Farm Loan Commissioner shall notify each national farm loan association in writing that such election is to be held, giving the number of directors to be elected for its district, and requesting each association to nominate one candidate for each director to be elected. Within ten days of the receipt of such notice each association shall forward its nominations to said Farm Loan Commissioner. Said commissioner shall prepare a list of candidates for local directors consisting of the twenty persons securing the highest number of votes from national farm loan associations making such nominations.

At least one month before said election said Farm Loan Commissioner shall mail to each national farm loan association the list of candidates. The directors of each national farm loan association shall cast the vote of said association for as many candidates on said list as there are

vacancies to be filled, and shall forward said vote to the Farm Loan Commissioner within ten days after said list of candidates is received by them. The candidates receiving the highest number of votes shall be elected as local directors. In case of a tie the Farm Loan Commissioner shall determine the choice.

The Federal Farm Loan Board shall designate one of the district directors to serve for three years and to act as chairman of the board of directors. It shall designate one of said directors to serve for a term of two years and one to serve for a term of one year. After the first appointments each district director shall be appointed for a term of three years.

At the first regular meeting of the board of directors of each Federal land bank it shall be the duty of the local directors to designate two of the local directors whose term of office shall expire in one year from the date of such meeting, two whose term of office shall expire in two years from said date, and two whose term of office shall expire in three years from said date. Thereafter every local director of a Federal land bank chosen as hereinbefore provided shall hold office for a term of three years. Vacancies that may occur in the board of directors shall be filled for the unexpired term in the manner provided for the original selection of such directors.